Alliance for Public Technology

901 15th Street, NW • Suite 230 • P.O. Box 28578 • Washington, DC • 20038-8578
(202) 408-1403 (Voice/TTY) • (202) 408-1134 (Fax) • apt@apt.org (E-mail)

EX PARTE OR LATE FILED

July 19, 1996

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: CC Docket No. 96-98
Ex Parte Communications

Dear Mr. Chairman.

The Alliance for Public Technology (APT) has submitted comments in the above proceeding. This paper is designed to emphasize highlights of these prior comments because of the critical significance which APT and its members attach to the interconnection rules.

General: APT urges the FCC to exercise restraint in the scope of the rules which it will issue on this first go around on interconnection, in recognition that the states have the heavy duty rowing to do in the interconnect process for the following reasons:

- The Act's scheme is for Congressional guidance, FCC amplification or clarification in its August rules, negotiation between the parties, and State resolution of any stalemates. The FCC should adopt clarifying rules, consistent with Act, to avoid 50 States possibly misconstruing Act, with appeals in many district courts.

- On some aspects, FCC cannot set out definitive rules but can only give some general guidance, and leave it to negotiation and the States to resolve based on particular facts.

- The August rules should not be perceived as the end of the game for the FCC. The States are laboratories, and the FCC can return to some facet to revise or adopt a definitive rule based on State experiences.

2

Cost standard for unbundled elements: APT urges the FCC to take into account all legitimate costs in formulating the applicable standard to be applied in interconnection negotiations as to resolution of dispute because of the mandate of the 1996 Telecommunications Act and because APT is convinced that proceeding in this fashion will both jump start some form of competition immediately and create incentives for achieving the statutory goal of facilities-based competition.

Law: The Act specifies [252(d) (1) (A) (B)] that State PUCs are to determine just and reasonable pricing by looking to costs, and that the price "may include a reasonable profit." The sum of the costs of all the network elements is the cost of the entire network; a PUC has the authority under the Act to take into account joint and common costs of the network (and thus all its elements) and to give the LEC a reasonable profit on the network (and thus all its elements), including a return on past investment made in accord with its regulation. Indeed, it may have a duty to do so to avoid a constitutional (takings) issue, although that issue might well be avoided in light of the clear statutory scheme.

Policy: There is a benefit in promoting initial quick entry by competitors by making the local loop element, with its economies of scale, available at the lowest possible price to newcomers (TSLRIC). Thus, companies like the big IX carriers (AT&T, MCI, Sprint) will undoubtedly make full use of the existing local loop, especially for residential subscribers, and with their marketing resources and present extensive customer contacts, will become large players in local telecommunications, perhaps eventually in one-stop shopping campaigns. This is certainly a substantial plus.

- But a large downside of this type of quick entry will be to stop or seriously inhibit facilities based competition. The local loop will remain the dominant facilities element for local voice services for residences and small businesses for years, and consumers will continue to be dependent on the nature and quality of the loop (regardless of which voice carrier they choose) without any actual competition to incent its upgrading. Thus the local loop will not be subject to competition in this respect unless and until wireless (cellular and PCS) finally breaks through sometime in the next century. But the Act seeks now to promote facilities competition to the LEC, including the most important facilities bottleneck, the local loop (see 271 (c) (1) (A)-- track A).

- Because it is most doubtful under the TSLRIC scenario that there will be a newcomer competing exclusively or predominantly over its own facilities with the critical LEC local loop for residential customers, it will be argued with some merit that track A has not been met. This, in turn, may well mean that track B [271 (c) (1) (B)] -- a less desirable policy fallback -- will be looked to for BOC entry into in-region IX service.

- Thus, by applying TSLRIC, the FCC is giving up on facilities (loop) competition in the next decade. It may be that competition to the loop in the residential field will prove infeasible, but the FCC cannot now properly jump to that conclusion

in the face of the clear statutory scheme.

- The TSLRIC scenario conflicts with the statutory resale provision. It makes no sense that if a competitor interconnects with the whole network by reselling the network's services, a return on joint and common and embedded costs is allowed, but if a competitor interconnects with the network, but does so element by element, there is no such return allowed under TSLRIC.

- It is inconsistent policy to adopt a rate standard which fails to compensate for past investment costs and at the same time be urging new investment by the LEC in network modernization and upgrades through regulatory breaks (e.g., manipulating price caps) to encourage investment for advanced telecommunications (Sec. 706).

The access charge controversy: APT believes that the Commission has discretion not to take precipitous action with respect to access charges and urges remedial action with respect to these charges that is implemented over a period of a few years.

- There is an issue of statutory construction as to whether Section 251 permits IXs to avoid access charges by making use of the Act's interconnection provisions (compare terms of 251(c)/252(d)(1) with Section 251 (g), which refers to present access charges continuing "...including receipt of compensation...") in the context or preserving the access part of the MFJ, pending further FCC action. The legislative history is silent on this issue which is strange if indeed such a major change as eliminating access charges was contemplated by Congress in enacting Section 251. In APT's view, however, resolution of this statutory question is not the critical issue.

- APT recognizes that there is no real difference between a LEC terminating traffic for a local competitor (other than an IX) or for an IX. Terminating traffic in the local loop is the same service regardless of on whose behalf it is performed ("a minute is a minute is a minute").

  Thus, in light of the new environment created by the Act, the critical issue is how quickly to substitute some new regime in the IX access arena and how this will affect matters like revenue requirements, local loop rates, and universal service. APT believes that the Commission should avoid disruptive action inconsistent with the public interest, and therefore calls for a remedial plan effected within a few years.

Resale: The Act is clear in its prescription of the statutory standard -- the wholesale rate is the retail less the costs that will be avoided [252(d)(3)]. There is nothing in the terms of the statute or its legislative history to indicate that the States can go further in order to be "more pro-competitive" -- to go anywhere they want in discounting the retail price. The standard is thus

not that advocated by some new competitors -- a discount based on what it allegedly takes to compete. Further, there is the same problem referred to above -- "pro-competitive" for what? The policy certainly promotes use of the local loop, but it may be anti-competitive for facilities competition to the local loop, by using an improper pricing signal. The parties can, of course, negotiate any rate they choose but if there is a deadlock requiring PUC resolution, that action must follow the above statutory standard. The costs avoided may well vary with particular circumstances, and thus APT believes that this area is best left to negotiation and State resolution rather than an FCC "one size fits all" prescription.

Reciprocal agreements: Again the Act is clear: The PUCs must resolve controversies based on "a reasonable approximation of the additional costs of terminating ... calls [252 (d) (1) (A) (ii)], with the parties having the option of agreeing to "bill and keep" (or any other arrangement) in their negotiations. If there is no such agreement, APT does not believe that the FCC can now direct that all PUCs must then adopt the "bill and keep" approach. The costs of termination are low, but unless the FCC can find that they are zero, this is a matter left to PUC resolution. Stated differently, is the FCC in a position to hold that, for example, the Maryland PUC resolution (0.3/0.5 of a cent, based on central or tandem office) is erroneous?

Conclusion: The Act's basic strategy is to break the present LEC monopoly, including that of the loop, by promoting vigorous competition in local telecommunications. The goal is to enable telecommunications to make a maximum contribution to efficiencies and innovation and to create incentives for long term investment in advanced telecommunications infrastructure. That goal will not be fully attained if government regulation imposes inefficient or unfair pricing and thus sends false economic signals. Further, once entrants rely upon such signals, it is most difficult later to correct the situation.

Sincerely,

Mary Gardiner Jones

Mary Gardiner Jones
Chairman
Alliance for Public Technology Policy Committee

cc: Commissioners Rachelle Chong, Susan Ness, James Quello
Secretary William Caton (two copies)
FCC Interconnection Staff: Jon Nakahata, Lauren Belvin, Suzanne Toller, James Casserly, Sharron Diskin, David Nall, Regina Keeney, Lisa Gelb, Kalpac Gude, Bill Von Alven